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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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FILE: B-216605

DATE: March 26, 1985

MATTER OF: Donna J. Safreed--Retroactive Temporary  
Promotions--Nondiscretionary Agency Policy

## DIGEST:

An employee was assigned the duties of a vacant and higher-graded position, but her temporary promotion to the position was delayed because of a clerical error. The employee's temporary promotion may be effected retroactively, because the agency failed to carry out a nondiscretionary policy of temporarily promoting each employee who assumed the duties of the vacant position.

The Director of the Personnel Division, United States Department of Agriculture, Food and Nutrition Service, requests our decision concerning Ms. Donna J. Safreed, an employee of the Food and Nutrition Service. Specifically, the agency questions whether a clerical error delaying the approval of Ms. Safreed's temporary promotion to a vacant and higher-graded position provides a basis for effecting the temporary promotion retroactively. We hold that Ms. Safreed is entitled to a retroactive temporary promotion because the agency failed to carry out an established policy of temporarily promoting each employee who performed the duties of the vacant position.

## FACTS

Ms. Safreed is employed by the Northeast Regional Office ("the region") of the Food and Nutrition Service as a Supervisory Food Program Specialist, grade GM-13. In mid-April 1984, the region submitted a Standard Form 52, Request for Personnel Action, to the agency's central personnel office, requesting Ms. Safreed's temporary promotion to the position of Acting Program Director, grade GM-14, effective April 29 to August 26, 1984. The higher-graded position, vacant since April 1983, had previously been filled through a temporary promotion.

The agency's personnel office received the request for Ms. Safreed's temporary promotion on April 23, 1984.

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Before granting the request, the authorized official forwarded it to the agency's classification branch for classification approval. The classification branch misplaced the Standard Form 52, and asked the region to furnish a replacement copy. Meanwhile, on April 29, 1984, Ms. Safreed began performing the duties of Acting Program Director, grade GM-14.

In June 1984, the personnel office received a copy of the misplaced Standard Form 52, and the authorized official approved Ms. Safreed's temporary promotion effective June 24 to August 26, 1984. After Ms. Safreed completed her assignment in August 1984, the agency temporarily promoted another employee to the position of Acting Program Director.

The Food and Nutrition Service states that it would have temporarily promoted Ms. Safreed effective April 29, 1984, had its classification branch not misplaced the Standard Form 52. The agency explains that it has established a pattern of temporarily promoting individuals to fill the position of Acting Program Director, and that it has not encountered any problems in effecting other temporary promotions to the position. While the agency suggests that these factors provide a basis for implementing Ms. Safreed's temporary promotion retroactively, it questions the legality of such an action. In this regard, the agency cites our decisions holding that, as a general rule, the loss of a promotion request prior to approval by the authorized official will not support the award of a retroactive promotion.

#### DISCUSSION

As a general rule, errors in processing a promotion or other personnel action may not be remedied if they occur prior to approval of the personnel action by the authorized official. The rule and its exceptions are set forth in Janice Levy, B-190408, December 21, 1977, at pages 8-9, as follows:

"As a general rule a personnel action may not be made retroactive so as to increase the right of an employee to compensation.

We have made exceptions to this rule where administrative or clerical error (1) prevented a personnel action from being effected as originally intended, (2) resulted in nondiscretionary administrative regulations or policies not being carried out, or (3) has deprived the employee of a right granted by statute or regulation. See 55 Comp. Gen. 42 (1975), 54 id. 888 (1975), and decisions cited therein."

The facts of this case fall within the second exception recognized in Levy, relating to an agency's failure to effectuate a nondiscretionary policy. Specifically, the record shows that the Program Director position filled by Ms. Safreed was vacant for an extended period. Before and after her service in the position, the vacancy was filled through temporary promotions. The circumstances indicate that the agency had an established policy of temporarily promoting each employee who served as Acting Program Director, and that these temporary promotions were granted routinely. Under these circumstances, we conclude that the agency violated a nondiscretionary policy by failing to promote Ms. Safreed on April 29, 1984, the date she began serving as Acting Program Director. See generally B-211784, May 1, 1984; Joseph Pompeo, B-186916, April 25, 1977; and 54 Comp. Gen. 69 (1974).

Accordingly, for the reasons stated above, we hold that Ms. Safreed's temporary promotion may be effected retroactively.

*Harry D. Van Cleave*  
for Comptroller General  
of the United States